FRANK W. SHARP

IBLA 78-69 Decided May 31, 1978

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting color-of-title application AA 8804.

Affirmed.

1. Color or Claim of Title: Generally -- Withdrawals and Reservations: Effect of

   The Color of Title Act, 43 U.S.C. § 1068 (1976), applies only to public land, i.e., vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon color of title initiated when the subject land was withdrawn from the operation of the public land laws and reserved as national forest land must be rejected.

2. Color of Title: Generally

   The possession and improvement of public land by a color of title applicant in the mistaken belief that he owns it is not a sufficient basis for conveying the land under that Act. Color or claim of title must be based upon a document from a source other than the United States, which on its face purports to convey the land applied for to the applicant.

3. Color of Claim of Title: Generally

   The obligation for proving a valid color of title claim is upon the claimant.

APPEARANCES: Frank W. Sharp, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank W. Sharp has appealed from the Alaska State Office, Bureau of Land Management, decision dated September 30, 1977, which rejected his application AA 8804 to acquire certain public lands pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976). The application had been filed February 28, 1974, for 15.02 acres, described as lot 3, sec. 36, T. 50 S., R. 67 E., Copper River meridian, Alaska.

Record information as to this parcel is as follows: All of T. 50 S., R. 67 E., was included in the Tongass National Forest, established by Presidential Proclamation 846 of February 16, 1909. Pursuant to the Act of March 4, 1915, 38 Stat. 1214, when public lands in the Territory of Alaska are surveyed, secs. 16 and 36 in each township shall be reserved from sale or settlement for the support of the common schools in the Territory. Under the Alaska Statehood Act, Sec. 6, par. K, 48 U.S.C. Prec. § 21 (1976), title to these reserved school lands passed to the State of Alaska as of the date of the State's admission into the Union. The Statehood Act further provided that title did not pass as to any such school sections which were appropriated by the United States prior to the date of admission of Alaska into the Union. James Sharp received homesite permit No. 546 on June 17, 1935, from the U.S. Forest Service, for 4.76 acres within lot 3, sec. 36, T. 50 S., R. 67 E. A supplemental plat to accommodate the elimination of this 4.76 acres from lot 3 was approved by the General Land Office (predecessor of the Bureau of Land Management), October 25, 1938, with the homesite land being described as lot 8, 4.76 acres, and the remaining portion of lot 3 being delineated as lot 9, 10.26 acres. In 1942, Executive Order 9059 excluded Homesite No. 546 (lot 8, sec. 36, T. 50 S., R. 67 E.) from the Tongass National Forest. No application to purchase Homesite No. 546 was ever filed, by James Sharp. On January 3, 1959, when Alaska became a State, only lot 8, was unreserved public land in sec. 36, T. 50 S., R. 67 E. Frank W. Sharp filed his color-of-title application in 1974, and in 1975, the State of Alaska filed application AA 9199 for title to the lands in sec. 36, T. 50 S., R. 67 E., granted for common schools. 1/ In concurrent actions, BLM approved the State grant for only lot 8, sec. 36, and rejected the color-of-title application in toto: as to lot 8 because title was vested in the State, and as to lot 9 because it was withdrawn for the Tongass National Forest.

1/ On June 30, 1960, the State of Alaska filed application Juneau 011970 for patent to the school section lands in lots 2, 3, 4, 5, 7, sec. 36, T. 50 S., R. 67 E. The application was rejected by State Office decision of August 18, 1960. The basis given for rejection was that all of the lands in sec. 36 were reserved within the Tongass National Forest. The decision inadvertently overlooked the redesignation of lot 3 as lots 8, 9, and that lot 8 had been eliminated from the Tongass National Forest.

Sharp filed his color-of-title application under the first proviso of the Act, supra, which allows the Secretary of the Interior to issue a patent for not to exceed 160 acres upon payment of the appropriate purchase price where it has been shown that the tract of public land has been held in good faith, and in peaceful, adverse possession by the claimant, his ancestors or grantors, under claim or color of title for more than 20 years, and where valuable improvements have been placed on the land or where some part of the land has been reduced to cultivation.

Appellant asserts cultivation of at least 1 acre for a house garden each year from 1935 to 1971, and that a house and other buildings, valued at $5,000, have been placed on the land. The application recites that one James R. Sharp, uncle of the applicant, settled on the land in April 1935, building a house in which he lived yearlong; that the property was sold in 1945 to Albert T. Sharp, father of the applicant, who lived on the land until 1971, cultivating the house garden during his residency on the land, and building a new house in 1956; that the land and improvements were taxed to Albert Sharp by the Territory of Alaska in 1951 (paid in 1955); and that appellant acquired the land from Albert T. Sharp by a warranty deed dated November 23, 1971. Appellant alleges that his first knowledge that the subject land had not been patented came in January 1974, when his uncle, James Sharp, told him that the BLM records did not show that he was the owner.

In support of his claim, appellant filed a copy of the warranty deed of November 23, 1971, from Albert Sharp to himself, for "A certain lot or parcel of land situated in Angoon, First Judicial District, State of Alaska, more particularly described as follows: All of Homesite 546, lot 3, sec. 36, U.S. Survey No. 1567"; and a copy of the quit claim deed of February 15, 1975, from James R. Sharp and wife to himself and wife for "All and entire that parcel of land shown on the annexed map, which parcel is shaded and outlined in red bearing the figures 3/15.02. Said map is incorporated herein and made a part thereof by this reference," and "The purpose of this deed is to confirm a sale of the property involved herein by Grantors to Albert T. Sharp, the Grantee and father of Frank W. Sharp, one of the above-named Grantees."

We look first at lot 9, that portion of the original lot 3 which remains withdrawn within the Tongass National Forest. The Color of Title Act, supra, applies only to public land, i.e., vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon claim or color of title initiated when the subject land was withdrawn from operation of the public lands laws and reserved as national forest must be rejected. Ben J. Boschetto, 21 IBLA 193 (1975). Land withdrawn for national forest purposes is not "public land" subject to the operation

of the public land laws because the purpose of the withdrawal is to reserve the land from the ambit of such laws and reserve it for use by the United States. Thus, the term "public land" can only be defined in context, and is not a term of art having specific legal effect. Usually it means land belonging to the United States and which is subject to sale or other disposal under the general public land laws, and not reserved or held back for any special governmental or public purpose. Boschetto, supra. As lot 9 is withdrawn for the Tongass National Forest, and was withdrawn at the initiation of the claim rejection of the color-of-title application for this land was proper.

We turn now to a consideration of lot 8, that portion of original lot 3 embraced by Forest Service Homesite 546 and excluded from the Tongass National Forest by Executive Order in 1942 and restored to entry under applicable public land laws, including the Color-of-Title Act. The appellant has not presented any document which purports to convey title to lot 8, and which was executed more than 20 years prior to the date of this color-of-title application. A claim or color title must be based on a document or documents, from a source other than the United States, which on their face purport to convey title to the land applied for, but which is not good title. Mable H. Farlow, 30 IBLA 320 (1977). The mere possession and improvement of public land by a color-of-title applicant (or his predecessor) in the mistaken belief that he owns it is not a sufficient basis for conveying the land under that Act. Cloyd and Velma Mitchell, 22 IBLA 299 (1975). Color or claim of title must be based upon a document from a source other than the United States which on its face purports to convey the land applied for to the applicant. Estate of James J. Lee, deceased, 26 IBLA 102 (1976).

The quitclaim deed from James Sharp to appellant alleges it is to confirm a sale of [lot 3] to Albert Sharp at some undisclosed time in the past. But nowhere in the record is there any evidence to show that James Sharp had reason to believe that he had title to the land. His only authority for occupying the land was a use permit granted by the Forest Service. This permit lapsed when the land it described was eliminated from the Tongass National Forest. His acceptance of the permit was a tacit recognition that title was in the United States and therefore precluded a good faith adverse holding. Minnie E. Wharton, 4 IBLA 287, 79 I.D. 6 (1972); rev'd on other grounds, 514 F.2d 406 (9th Cir. 1975). An application to purchase public land under the Color of Title Act, supra, is properly rejected where applicant has held the land for less than 20 years under a conveyance of a grantor who had occupied the land for more than 20 years, but fails to show that his grantor had any reason to believe that he had title to the land other than merely by alleged adverse possession arising from a use permit of a third

party, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated by the Color of Title Act, supra. Cf. Mildred A. Powers, 27 IBLA 213 (1976). The State Office properly rejected the subject application for lot 8.

We only rule in this case on the adequacy of the application to meet the requirements of the Color of Title Act. We do not rule on other aspects of the BLM State Office's decision relating to the grant to the State of Alaska. In light of appellant's recitation regarding the use and occupation of lot 8 by his father and uncle, Tlingit Indians, further consideration should be given by BLM whether the common school grant to the State was operative as to that lot in view of section 8 of the Alaska Organic Act of May 17, 1884, 23 Stat. 26.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Douglas E. Henriques
Administrative Judge

We concur:

_____
Joan B. Thompson
Administrative Judge

_____
Frederick Fishman
Administrative Judge